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BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

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U.S.-U.K. Alliance Case

Docket OST-2001-11029 -7

ANSWER OF VIRGIN ATLANTIC AIRWAYS LIMITED
IN SUPPORT OF JOINT MOTION FOR AN ORAL
EVIDENTIARY HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE

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Dated: November 26, 2001

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

U.S.-U.K. Alliance Case

Docket OST-2001-11029
November 26, 2001

ANSWER OF VIRGIN ATLANTIC AIRWAYS LIMITED
IN SUPPORT OF JOINT MOTION FOR AN ORAL
EVIDENTIARY HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE

Virgin Atlantic Airways Limited 1/ hereby files this answer in support of the Joint Motion for an Oral Evidentiary Hearing before an Administrative Law Judge that was filed by Delta Air Lines, Northwest Airlines, and Continental Airlines in the above captioned proceeding on November 19, 2001 (the "Motion"). 2/ Virgin fully supports the joint movants' request that the Department establish an oral evidentiary hearing before an Administrative Law Judge ("ALJ") in accordance with section 303.45 of the Department's Procedural Regulations.

1/ Virgin and other carriers mentioned in this Answer are referred to by their commonly used names.

2/ The Motion originally was filed in the American Airlines/British Airways proceedings (Dockets OST-2001-10387 and 10388). However, by Order 2001-11-10, the Department consolidated those proceedings and the United Air Lines/British Midland/Star Alliance proceedings (Dockets OST-2001-10575 and 10576) together into the U.S.-U.K. Alliance Case proceeding (Docket OST-2001-11029). Virgin notes that the same reasoning which supports holding an oral evidentiary hearing with respect to the proposed

1. The Department Clearly Has the Authority to Establish an Oral Evidentiary Hearing in this Proceeding.

Section 41309 of Title 49, U.S. Code, explicitly authorizes the Department to conduct a hearing to decide whether antitrust-immunized code-share agreements between carriers like American and British Airways (or United and British Midland/Star Alliance) will substantially reduce or eliminate competition, and whether such a proposed agreement answers a serious transportation need or achieves important public benefits that cannot be achieved by reasonably available alternatives that are less anticompetitive.

Based on this statutory authority, the Department has promulgated procedural regulations that contemplate the establishment of full evidentiary hearings (including any hybrid form of hearing selected by the Department) to deal with material, disputed issues of fact that cannot be resolved in the absence of such a hearing. See 14 C.F.R. §§ 303.42(c), 303.43, & 303.45.

2. This Proceeding Presents Numerous, Disputed Factual Issues that Require a Hearing for Resolution.

When American and British Airways made their first attempt to secure antitrust immunity for their proposed code-share alliance (see Docket

American/British Airways alliance also supports holding an oral evidentiary hearing in the consolidated U.S.-U.K. Alliance Case.

OST-1997-2058), the Department soundly concluded that “some type of oral hearing is warranted in this case,” noting that “[t]his is an exceptional case, posing a unique set of issues” and “entail[ing] an enormous degree of regulatory complexity.” 3/ Chief among the competition and policy issues was “the fundamental and unprecedented issue of . . . expanded access into London’s Heathrow Airport.” 4/

The need for an oral evidentiary hearing in the instant proceeding is as acute as before. In the past four years, nothing substantive has occurred that would diminish the potential anticompetitive effects of an immunized American/British Airways code-share alliance, nor lessen the crucial importance of meaningful, expanded access to Heathrow for potential competitors of American and British Airways.

Moreover, the Department’s analysis of the competitive and public interest issues will entail an analysis of a host of disputed, material factual issues, which have surfaced in the current proceeding as they did in the prior alliance immunity case and that cannot be resolved without an oral evidentiary hearing. The Department must also address credibility issues

3/ Order 97-9-4 at 16, aff’d Order 98-7-23 (granting petitions for reconsideration of Order 97-9-4 but affirming the order).

4/ Order 97-9-4 at 16-17.

surrounding certain statements and studies that have been submitted in favor of immunizing the proposed American/British Airways code-share alliance that appear inconsistent with prior positions expressed by the authors.

3. The Department's Oral Evidentiary Hearing Should Be Held Before an ALJ Using Formal Adjudicatory Procedures.

When the Department decided to hold a hearing in the original American/British Airways antitrust immunity proceeding, the Department concluded that it was not necessary to have an ALJ preside over the hearing or to use formal adjudicatory procedures. ^{5/} Nevertheless, several considerations dictate that the Department should order a full evidentiary hearing before an ALJ in the current proceeding. First, as discussed in the Motion, the Joint Applicants and interested parties disagree on a multitude of complex material facts, including credibility issues that the Department must resolve in this new proceeding and that can only be determined by requiring witnesses to testify and to be subjected to cross examination before an ALJ using formal adjudicatory procedures. Motion at 16-18.

Second, it would be most efficient to have an ALJ experienced in conducting full evidentiary proceedings compile the administrative record

^{5/} See Order 98-7-23 at 8-9.

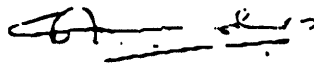
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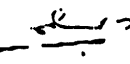
and initially determine the contested factual and public policy issues presented by this proceeding and then submit a Recommended Decision to the Assistant Secretary. The need for an ALJ to assemble the record and to make reasoned findings and conclusions on material issues of fact and law is particularly compelling in light of the additional body of evidence that will flow from the consolidation of the United/British Midland antitrust immunity application into this proceeding.

WHEREFORE, Virgin Atlantic Airways Limited urges the Department to establish an oral evidentiary hearing before an Administrative Law Judge in accordance with section 303.45 of the Department's Procedural Regulations.

Respectfully Submitted,



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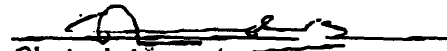
Dated: November 26, 2001

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing
"Answer of Virgin Atlantic Airways Limited in Support of Joint Motion for an
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persons named on the attached Service List by causing a copy to be sent by
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Dated: November 26, 2001

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